

Contingency fee call from NSW president

The President of the New South Wales Law Society, John Marsden, has called for serious consideration of contingency fees for lawyers.

Mr Marsden said such a system was a "vital step in reducing court delays and promoting wider access to justice."

A spokesman for the NSW Law Society, Michael Bach, said there had been no contemplation of the size of contingency fees common in the USA. There it is not unusual for a lawyer to receive 25-30 per cent of an award.

"This is not a percentage of the award," Mr Bach said.

"It is a premium over and above what would normally be charged," he said. Council of the NSW Law Society approved the concept in principle.

It is now open to wider debate and would require amendments to the *Legal Profession Act* which prohibits contingency fee arrangements.

"Lawyers will be far less inclined to take a frivolous or vexatious case that has little or no chance of success because they will not collect a fee."

"They will also be more inclined to conclude matters quickly," Mr Marsden said and added that the concept required rigorous examination. "It is an area that needs a great deal of attention and study."

"We have to look closely at how the concept will affect the justice system and particularly at the impact on court delays," Mr Marsden said.

Mr Marsden is understood to be planning a summit for later in the year to address issues such as court delays and the cost of justice.

GST will affect legal costs: Tate

The Minister for Justice and Consumer Affairs, Michael Tate, has described the Coalition's goods and services tax as "a very bitter blow." Senator Tate said the GST would add 15 per cent to the provision of legal services and would result in people of limited means being left without legal representation.

He said the estimated total annual cost of legal services supplied in Australia, based on ABS figures, exceeds \$3 billion.

"Because of the GST, hundreds of

millions of dollars would be added to the cost.

"At a time when the community is crying out for a reduction in the costs of legal services, the Hewson package will markedly increase the costs."

"It will apply to every legal matter, regardless of size, content or merit throughout the entire Australian community," he said.

Senator Tate said legal aid would be very hard hit under the GST package. He said the package included a cut of

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Solicitors taxed on disputed funds

The High Court has affirmed the decision of the Full Federal Court in Harmer's case 90 ATC 4672.

In a joint judgment, the five judges held that solicitors holding disputed funds on trust for the parties to a dispute were liable to tax on the interest earned from the investment of the funds.

During the course of interpleader proceedings to determine the entitlement of four competing claimants to loan moneys, the WA Supreme Court ordered that the moneys be paid into court.

The Court then ordered that the money be invested with a building society in the names of the claimants' solicitors, to be held on trust pending the determination of the proceedings.

The investment yielded interest income in the 1982/83 and 1983/84 tax years and the dispute was resolved in 1985.

In 1986, the Commissioner assessed the solicitors as trustees, pursuant to s99A, to pay income tax and penalty tax on the whole of the interest derived. The solicitors' objections were disallowed and they appealed to the Federal Court.

At first instance, French J held that though the solicitors were trustees, they were not assessable on the interest.

The claimants were beneficiaries

"presently entitled" to the trust income (ie the interest) even though their entitlement was not ascertained until determination of the interpleader proceedings.

The Full Federal Court unanimously allowed the Commissioner's appeal and the solicitors appealed to the High Court.

The High Court has dismissed the solicitors' appeal.

Their Honours held that upon payment of the disputed moneys into court, no claimant was beneficially entitled to either the whole or any part of the moneys paid into court or of the interest earned on it.

The respective interests of the claimants were, at best, contingent upon a Court Order being made in his or her favour.

Unless and until such an order was made, no claimant had a vested interest in the moneys lodged with the building society, in the interest earned on it or in the rights of the solicitors as the legal creditors of the building society. It followed from their Honours' reasoning that none of the claimants were "presently entitled" to the trust income. Accordingly, the Full Federal Court was correct in holding that the solicitors were assessable on the interest pursuant to s99A.

** Extracted from 1991 Australian Tax Cases, 23 December 1991.*

GST will add to costs

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\$10 million in the annual \$134 million Commonwealth contribution to legal aid.

The Leader of the Opposition, John Hewson, claimed the \$10 million could be saved in administrative costs. "The total spent this year by the Legal Aid Commissions on non-legal administrative costs for legal aid is only \$11.3 million," Senator Tate said.

He said reducing the legal aid budget by \$10 million would destroy the system.

"On top of this, the cost to each Legal Aid Commission of briefing outside lawyers will be greatly increased by the goods and services tax," Senator Tate said.

"Legal aid money will be going into the Federal Treasury via the GST rather than for the benefit of people who desperately need it.

"Some work will be done inhouse, but the amount of contracted work will have to be drastically reduced because the Legal Aid Commissions will be unable to afford it with their reduced budgets and higher costs."

Senator Tate said the combination of cost-cutting and the GST meant a loss of \$31.5 million in Commonwealth legal aid funding.

"At the current average cost per case of \$1,236, that means 14,633 cases per year would not be able to be funded -- denying that number of people access to justice," he said.

Stamp duty extended from 1992

Changes to Northern Territory stamp duty charges came into effect on 1 January.

Stamp duty has been extended to cover property such as business goodwill, intellectual property rights, sale of trade marks and patents and chattels. Amendments to the *Taxation (Administration) Act* and the *Stamp Duty Act* introduced the concept of "duti-able property" which includes previ-

ously dutiable property and extends the property subject to stamp duty.

Dutiable property is: (1) land including a lease of land, a mining tenement or a fixture to land; (2) business property including goodwill, intellectual property, business name or trade mark, a right to use a thing, system or process the subject of a patent or copyright, a patent, registered design or copyright, and a statu-

tory license; (3) other types of dutiable property are an option to purchase dutiable property and chattels (excluding stock in trade, materials held for manufacture, goods under manufacture, livestock, motor vehicles, cash and negotiable instruments). Further information is available from Northern Territory Treasury, phone Darwin 897987 and Alice Springs 515900.